

PT 02-2

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

PRINCE OF PEACE LUTHERAN CHURCH)

Applicant

)

A.H. Docket #

00-PT-0074

)

Docket #

00-41-14

v.

)

)

Parcel Index #

06-36-201-005

THE DEPARTMENT OF REVENUE

)

OF THE STATE OF ILLINOIS

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)

Barbara S. Rowe

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 West Jefferson Street, Springfield, Illinois on August 14, 2001, to determine whether or not Jefferson County Parcel Index No. 06-36-201-005 qualified for exemption during the 2000-assessment year.

Anton William Scheer, Pastor of the Prince of Peace Lutheran Church, (hereinafter referred to as the "Applicant") and James "Tab" Kelley, president of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 2000-assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 2000-assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be granted for a portion of the 2000-assessment

year. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Jefferson County Parcel Index No. 06-36-201-005 did not qualify for a property tax exemption for the 2000-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 9)

2. The Board of Review of Jefferson County on July 13, 2000, recommended that the applicant's requested exemption be granted for the entire 2000-assessment year. On November 9, 2000, the Department denied the requested exemption finding that the property was not in exempt use. On November 14, 2000, the applicant timely requested a hearing in the matter. (Dept. Ex. No. 1)

3. On June 8, 1965, the applicant acquired the subject parcel by a warranty deed. (Dept. Ex. No. 1)

4. The subject parcel is applicant's church parsonage. It is located right next to the applicant's church. (Tr. p. 14)

5. Located on the subject property is a four-bedroom ranch-style home. (Dept. Ex. No. 1; Tr. p. 15)

6. The applicant's minister, hired in 1996, wished to purchase his own home. Applicant's congregation agreed to allow him to purchase a personal residence. The applicant decided at that time to rent the parsonage on the subject property and have the property placed back on the tax rolls, which was done. That pastor left applicant's church in 1998. (Tr. pp. 17-18)

7. In 1999-2000, the applicant knew it would be getting to the point of making and extending a call to a new minister. The church decided, as a council, that it was going to have the parsonage back and available to the new pastor. The rental tenants were notified that they would have to vacate the property. The property was empty from January 1, 2000 through July 25, 2000. (Tr. pp. 18-21)

8. In a meeting held July 2, 2000, the applicant's church council resolved to extend a letter of "Call to Candidate Anton W. Scheer". The applicant's package of compensation for Scheer was ratified on July 12, 2000. A special congregational meeting was held on July 16, 2000, at which the resolution to extend the call and package of compensation to Scheer was ratified by the church's congregation. On July 17, 2000, the information was forwarded to the applicant's bishop in Springfield, Illinois, to proceed with the necessary actions to conclude the Pastoral Call to Scheer. (Applicant's Ex. No. 1; Tr. p. 19)

9. Anton William Scheer was ordained as a minister of the Evangelical Lutheran Church in America on July 30, 2000. (Dept. Ex. No. 1)

10. August 1, 2000, was Pastor Scheer's first active date of being called to the applicant's church. (Tr. p. 13)

11. Pastor Scheer and his wife moved into the parsonage on the subject property on approximately July 25, 2000. (Tr. pp. 12, 21)

12. Prior to and after the pastor and his wife moved into the home on the parcel in question, the applicant restored the rental home. The carpeting was replaced; the kitchen remodeled with new countertops, a new sink, and refrigerator. The water heater was replaced and the entire house was repainted. Plumbing issues were addressed. (Tr. pp. 26-28)

13. Pastor Scheer has converted one of the bedrooms into an in-home office. His larger computer and personal files are kept in the office. He occasionally writes his sermons in the office. He sometimes holds meetings of the congregation at the parsonage. If someone cannot find him at the church, he is usually at the adjacent parsonage on the subject property. (Tr. pp. 14-15)

14. When the applicant filled out the Parsonage/Convent Questionnaire supplied by the Department as part of this parsonage-religious application, in a response to question No. 1: "Is the minister/nun required, as a condition of employment or association, to reside in the parsonage/convent?" the applicant replied: "Optional - Most pastors do live in the parsonage." In

response to Question No. 4: "[W]hat duties, if any, require the minister/nuns to live in close proximity to the church," the applicant replied: "None." (Dept. Ex. No. 1)

15. The application process for this applicant for the subject property for a 2000-assessment year exemption began in January 2000. As the applicant had not required its former minister to live in the parsonage, it listed that requirement as optional. The financial affairs of the applicant militate that the current pastor live in the parsonage as a condition of his appointment. (Tr. pp. 23-25)

16. The applicant was advised that they could be represented by counsel at the hearing. They chose not to be. (Tr. pp. 24-25)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The applicant's former minister, hired in 1996, wanted to purchase his own home, which the applicant allowed him to do. The subject property was on the tax rolls as rental property during the period that minister was the applicant's called pastor. Once the rental tenants moved out, the testimony was that the building and property were vacant.

The Illinois Supreme Court in McKenzie v. Johnson, 98 Ill. 87 (1983) held that the provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court also required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor's religious duties required that he live in close proximity to the church or because the parsonage had unique facilities for religious worship and instruction or was primarily used for such purposes.

The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983).

In the case at bar, the pastor moved into the home on the subject property on July 25, 2000. He was ordained as a minister on July 30, 2000. August 1, 2000 was his first day as the called minister of applicant's church. Prior to August 1, 2000, the property was not used for religious purposes.

If Pastor Scheer is not in applicant's church, he can be found in the adjacent parsonage on the subject property. He has congregational meetings in the home and sometimes writes his sermons there.

I find that the applicant has shown sufficient religious usage of the parsonage on the subject parcel, as required by the statute and McKenzie v. Johnson, to qualify for exemption from the time the ordained minister lived in the house on the subject parcel in 2000. I therefore recommend that Jefferson parcel Index No. 06-36-201-005 be granted an exemption from August 1, 2000 through December 31, 2000.

It is therefore recommended that Jefferson parcel Index No. 06-36-201-005 be assessed for taxation to the applicant for 58% of the year, or the period from January 1, 2000 through July 31, 2000 and be exempt from taxation for 42% of the 2000-assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
December 27, 2001